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The Madras Law Journal.

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THE VACANT ADVOCATE-GENERALSHIP.

I

The death of Mr. Spring Branson has rendered vacant an office which is the prize of the legal profession in Madras. The Advocate-General is the chief law officer of the Government of the Province. The office carries with it a salary of Rs. 1,800 per mensem with liberty to engage in private practice and the position of head of an important branch of the legal profession in Madras. When Mr. Branson took leave a few months ago in consequence of the illness which has since terminated fatally, an agitation sprang up in Madras on the part of the barristers practising here in regard to the appointment of a successor. When it was rumoured that the Government of Sir Arthur Havelock had it in contemplation to confer the officiating appointment upon a vakil, there was a considerable flutter in the ranks of barristers which is believed to have spread even to the ranks of our High Court Judges. The appointment was made. The Government found a competent person in the Honorable Mr. V. Bhashyam Aiyangar. Opinion was unanimous that the Government had selected a person pre-eminently fit for the office. Not even those who were eager to denounce the appointment as "illegal, inconvenient and injudicious" could breathe a syllable against the high qualifications of the Government nominee. It was practically conceded on all hands that he was the ablest lawyer at the bar in Madras; that he was in fact head and shoulders above every other aspirant for the office. Whether it is a question of Hindu Law or of English Mercantile Law, whether it is a point relating to the Law of Obligations or arising in the region of Private International Law, by his grasp of principles, his ready perception of legal analogies and his faculty of acute ratiocination he has achieved a solid reputation as the virtual leader of the Madras bar for many years. No

exception could therefore be taken on personal grounds. As the Government was entitled to the services of the best legal adviser, their choice of Mr. Bhashyam Aiyangar could not be cavilled at. Government could not afford to be content with an indifferent article. The chief function of the Advocate-General is to help the Government with advice; and the Government is bound to see in the interests of the country that the person selected is the most capable lawyer. In the Legislative Council whose recent expansion has led to a critical examination of Government measures by lawyers of ability whom the constituencies have deputed, Government has found the need for a thoroughly reliable and capable law officer. In the transaction of the business of the various departments under it, which is daily assuming more and more complex proportions, questions of difficulty have to be solved for which the assistance of an able law officer is indispensable. Nobody can therefore quarrel with the Government for being guided in its selection by no consideration of race or class interest.

It was said that the appointment was illegal, though nobody appears to have seriously believed in such a view. Light appears to have been sought for from Calcutta, but it only opened the eyes of the seekers to their own ignorance. The question of the legality of the appointment was reserved for a suitable opportunity, but when it was raised, the Judge pronounced it to be clearly legal. We have ourselves shown at considerable length that no special qualifications were prescribed by statute for the Advocate-General and that the Government were at liberty to choose a competent person. There has been some talk, not altogether wise, that by custom which has the force of law, the Advocate-General should only be a barrister. Such a statement does not deserve serious consideration; and one can only wonder at the desperate straits to which the opponents to the appointment are reduced, that they should raise objections which no person pretending to any legal attainments can with any safety to his reputation urge. S. 30 of 21 and 22 Vic., ch. 106, speaks of appointments which by regulation, custom or usage were being made by the Local Governments in India and empowers the authorities to make such appointments in the future as well. The custom here referred to is with reference to the appointing authority and has no reference to the qualifications of the person to be appointed. Indeed, it would be absurd

that a custom should be referred to as regards the qualifications of the Officiating Advocate-General, an appointment falling within S. 30, while S. 29, which speaks of the permanent appointment makes no allusion to any custom. We may next ask, is the custom ancient? The office of Advocate-General itself does not appear to be older than the latter half of the last century. Is it uniform? Then the question arises, whether the custom is to appoint a barrister of England or of Ireland or an advocate of the faculty of advocates in Scotland or an advocate of the Supreme Court not being a barrister. It is a fact that a Lieutenant in the Army and a Dragoon enrolled as Advocates of the Supreme Court have held the office of Advocate-General. We wonder why we are not told that tho Advocate-General is by custom fully six feet and that nobody can legally be appointed who is only five feet nine inches. The argument is so ridiculous that it seems idle to waste any further time upon it. It may well be that the Government hitherto succeeded in finding the most competent person for the office in the ranks of advocates, but the day has come when such an expectation cannot be always realized.

The death of Mr. Spring Branson will probably give rise to a renewal of the agitation which sprang up at the time of the announcement of his leave. The scene will probably be transferred to London as the permanent appointment rests with the Queen, or, virtually, the Secretary of State for India. It seems to us that he ought to have no difficulty in deciding the question, for the recommendation of the Local Government will be clear. It is generally understood that the Governor and his Council were unanimous in the selection of Mr. Bhashyam Aiyangar; and every argument that can be seriously adduced upon the subject is in favour of his permanent appointment. The Advocate-General in India has by virtue of his office various functions to discharge. With reference to the proper administration of charities, the Advocate-General *ex-officio* is entitled to institute a suit for the appointment of trustees or for the settlement of a scheme. Trusts, religious and charitable, are most numerous in this country among Hindus and Muhammadans. The Government has, in accordance with the policy of religious nuetrality, had to abstain from interference with the management of these trusts. Under these circumstances it is higly desirable that a native of India well

acquainted with the usages of religious institutions and charitable foundations should fill the office of Advocate-General which *ex-officio* entitles him to intervene, and no European, however well acquainted he may be with the laws of the land, can perform this function with any degree of efficiency.

It is again to be remembered that there is a large and growing body of legal practitioners enrolled as vakils of the High Court under rules framed in accordance with the power conferred by the Letters Patent, not to speak of the still more numerous body of first and second grade pleaders spread over the whole country. That this large body with no Inns of Court to exercise any disciplinary jurisdiction to enforce professional etiquette and good conduct should have a head to whom they could look up for counsel and guidance is reasonable and proper. There are shades of professional misconduct or breach of professional etiquette or impropriety of behaviour which cannot come under the cognizance of the courts of justice, nor even if they did, could they be checked and proper conduct enforced. The opinion of brother practitioners, the authority and example of a head who must be esteemed in all the ranks of the profession will do far more to enforce rectitude of conduct than the fear of a public exposure of grave delinquencies in a court. It goes without saying that a practitioner commanding the respect and possessing the confidence of Government and carrying the prestige attached to the position of chief law officer of the Government selected for his great talents and high attainments and position as leader of the bar, will be a source of immense influence for good which will permeate the ranks of the whole profession.

It is objected that the handful of barristers practising in Madras, not exceeding twenty in number, of whom not a dozen are of European birth will, if a vakil be appointed to the office of Advocate-General, lose an important medium of communication with the Inns of Court. We have already pointed out that a barrister of Ireland or an advocate of Scotland cannot be such a medium of communication; nor is it apparent why if a medium were necessary, the medium should be provided with an appointment at the cost of the State, or why one of their own body should not be chosen as president to be the channel of communication on points of etiquette

or professional discipline, or why the Government Pleader, who is in Madras a barrister, should not transmit to the Benchers the grievances of individual members in a case of breach of professional etiquette. Again, it may be asked, why should not the disciplinary jurisdiction possessed bythe High Court be invoked in case a question of importance is raised for settlement. The argument based upon the relation of the Inns of Courts with the handful of local barristers appears to us to be altogether fanciful.

The Government as the dispenser of patronage ought to bear in mind that there is another standpoint from which the appointment of Mr. Bhashyam Aiyangar may be looked upon as highly desirable. There are half a dozen crown offices at the disposal of Government, every one of which is held by a barrister. The office of Administrator-General is the only one among them which requires of the holder the qualification that he should be a barrister. None of the other offices is the exclusive privilege of barristers. Yet the Official Trustee is a barrister. The Government Pleader is another. A barrister holds the offices of Clerk of the Crown and Official Assignee. The Crown Prosecutor is a barrister. And a barrister holds the office of Law Reporter. With the exception of three, all the rest of the European barristers hold one crown office or another. And because one of these offices is proposed to be given to a native of India who is a vakil, admittedly holding the highest position at the bar, a storm of indignation is raised and wild suggestions are made that the appointment is illegal and inconvenient and injudicious. The Government may well consider that the large body of vakils should not be ignored and left in the cold. They have responsibilities in the administration of a country of varied and conflicting interests which the narrow selfishness of a handful of barristers cannot realize.

In answer to a question as to why a native of India should not be appointed to a seat in the India Council, Lord George Hamilton is reported to have said that he could not find one possessing sufficient administrative experience to fill the place. We feel that he cannot with any justice or consistency ignore the claims of Mr. Bhashyam Aiyangar for the office of Advocate-General. It will be a fitting act of grace on the part of Her Majesty that the year of her Diamond Jubilee should witness a further vindication of Her

gracious Proclamation of 1858 that in the distribution of patronage there shall be no difference of race, creed or colour.

II

The Advocate-General in India is in his province the first law officer of the Crown and as such has enjoyed precedence and pre-audience. The Sovereign is the fountain of all honors, and the law officer with the Queen's patent of precedence is entitled to pre-audience in Her Majesty's Courts. Such patents used to be granted to the Advocates-General of the Company before the transference of the Company's territories to the Crown. But the law officers of the Company have become the law officers of the Crown after the enactment of the statute 21 and 22 Vict, ch. 106. Although no patents of precedence are issued now-a-days, the Advocate-General as chief law officer of the Crown is entitled to the same precedence as he formerly enjoyed by virtue of his patent of precedence. The Officiating Advocate-General appointed by the Local Government under the provisions of S. 30 of 21 and 22 Vict, ch. 106, is entitled to the same precedence as the permanent Advocate-General as he is likewise the first law officer of the Crown. As the Sovereign dispenses justice through her courts, it stands to reason that her counsel should enjoy the right of pre-audience, no matter whether on the particular occasion they appear to plead her cause or the interests of a private suitor.

We have shown in a former article that there is no statutory qualification for the holder of the office of Advocate-General, and Her Majesty may appoint such person as she thinks fit for the office.

There are different orders of practitioners qualified to appear and plead, attached to the several High Courts, advocates and vakils who belong to two different branches. Advocates enjoy the right of pre-audience in Bombay and Allahabad by virtue of the rules framed by the respective High Courts. The question of pre-audience as between advocate and vakil was raised in Calcutta and decided in favour of the advocate by Sir Barnes Peacock. See 10 Sev's Report, p. 39. In Madras the question does not appear to have been raised, nor is there any rule upon the subject. But as a matter of fact the advocate has been treated as having a right of pre-audience. But this right of pre-audience of the advocate

enjoyed as a matter of practice cannot affect the right of the Advocate-General to that pre-audience which he is entitled to by virtue of his position as chief law officer of the Crown, no matter whether he is an advocate, vakil or attorney. The right of pre-audience of the advocate is not a statutory privilege and his right of pre-audience which is a mere matter of etiquette must yield to that of the chief law officer of the Crown before Her Majesty's Courts.

This view appears to derive considerable support from the history of the conflict in England between the Attorney-General who was not a serjeant and the serjeants entitled to the privilege of exclusive audience before the Court of Common Pleas. In England there was another branch of practitioners called advocates of the College of Advocates at Doctors' Commons practising in the Admiralty and Ecclesiastical Courts. Before the High Court of delegates and at the bar of the Privy Council, the advocates and barristers both had right of audience. An advocate took precedence of an ordinary barrister. We do not hear of the advocates now and the office of Advocate-General has practically become extinct, because it has not been filled up since the resignation of Sir Travers Twiss in 1872. (See Encyclopædia of the Laws of England-Title-Advocate-General). The order of serjeants also has nearly died out. In the Court of Common Pleas, serjeants had formerly the right of exclusive audience, and although it was decided in *Paddock* v. *Forester*, 8 Dowling 834, that the Attorney-General who was no serjeant had a right of audience in a cause in which the Crown was interested and the general body of barristers was denied the right, 6 Bingham's New Cases p. 235, this exclusive right of the serjeants continued until it was provided by the statute 9 and 10 Vict. ch. 54, that all barristers according to their rank and seniority should have equal right of practising, pleading and audience in the Common Pleas together with the serjeants, 3 Stephen's Commentaries p. 85. Although as a barrister merely he would have no right of audience at all before the Court of Common Pleas, yet as law officer of the Crown, the Attorney-General had this right and pre-audience also before the Court of Common Pleas.

Although, therefore, the order of barristers in England was regarded as inferior to that of the serjeants and that of advocates at one time, the Attorney-General as the principal law officer in

Westminister Hall was acceded audience before courts where the order of barristers had not the right and precedence over the members of the higher order. Arguing from analogy we are inclined to think that the Advocate-General in India is similarly entitled to precedence, though he may be a member of a lower order than barristers. The position of the Advocate-General has been compared to that of the Attorney-General in England by 35 Geo. III, ch. 155, S. 111, and by the Indian Act X of 1875, S. 144. And we have already pointed out that the Officiating Advocate-General stands in the same position. (See Bourke's Reports, pp. 226 and 227.)

Among the law officers of the Crown, the Attorney-General who was the head of the lower order of barristers held a position below others who were at the head of the higher orders of serjeants and advocates, such as the King's Ancient Serjeant and the King's Premier Serjeant and the Kings Advocate or Advocate-General. Before the same court, the Advocate-General took precedence in like manner of the Attorney-General and Solicitor-General. *Barton*, v. *R.*, 2 Moore's Privy Council 29; *Dyke* v. *Walford* 5 Moore's Privy Council, 447, *Harrison v. R.*, 10 Moore's Privy Council, 201. The Crown directed in 1862 that the Attorney-General and Solicitor General should take precedence in future of the Queen's Advocate. Blackstone gives a table of precedence at the bar which begins thus: 1, The King's Premier Serjeant; 2, The King's Ancient Sergeant; 3, The King's Advocate-General; 4, The King's Attorney-General; 5, The King's Solicitor-General. 3, Blackstone, p. 28. By a Royal Order of 1814 (See 6 Taunton, p. 424) the Attorney-General and Solicitor-General were declared to have precedence before the King's Serjeants. This appears to us to furnish a close parallel to that of a Vakil Advocate-General who, though as vakil, he may not be entitled to precedence, is still entitled to it by virtue of his position as first law officer of the Crown. A similar question arose with reference to the Tubman and Postman, the holders of two offices created by the Court of Exchequer who had precedence in motions. But the Court accorded it to the Attorney-General in a Crown case. *R.* v. *Bishop of Exeter*, 7 Meeson and Welsby, 188, and Stephen's Commentaries, Vol. III, p. 28. The Attorney-General has now prece-

dence in England in all courts over all other law officers. The head of an inferior order has been granted precedence over other law officers who were the heads of higher orders of the profession. Why should not a vakil Advocate-General in Madras enjoy the like precedence over the members of a higher order ?

RIGHTS OF RE-MARRIED WIDOWS.

I propose to discuss in this article the question to what extent the rights of a Hindu widow are affected by the provisions of Act XV of 1856. Before, however, proceeding at once to discuss the effect of the provisions of this Act upon the rights of the Hindu widow, it is desirable to ascertain whether the provisions of this Act govern the rights of all widows re-marrying since the passing of the Act. The preamble to the Act is in the following words :— "Whereas it is known that, by the law as administered in the civil courts established in the territories in the possession and under the Government of the East India Company, Hindu widows, with certain exceptions, are held to be, by reason of their having been once married, incapable of contracting a second valid marriage and the offspring of such widows by any second marriage are held to be illegitimate and incapable of inheriting property; and whereas many Hindus believe that this imputed legal incapacity, although it is in accordance with established custom, is not in accordance with a true interpretation of the precepts of their religion, and desire that the civil law administered by the courts of justice shall no longer prevent those Hindus who may be so minded from adopting a different custom, in accordance with the dictates of their own consciences; and whereas it is just to relieve all such Hindus from this legal incapacity of which they complain; and the removal of all obstacles to the marriage of Hindu widows will tend to the promotion of good morals and to the public welfare, it is enacted as follows." This preamble makes it clear that the enabling and disabling provisions of this Act were intended to apply only to such of the Hindu widows as could not have validly re-married but for this Act and not to such Hindu widows as could, under the provisions of any law or on the strength of a valid custom having the force of law, have validly re-married without the legal sanction accorded by this special enactment. The case-law on this point clearly sup-

ports this view. The Allahabad High Court in *Hur Saran Das* v. *Nandi* (I. L. R., 11 A., 330) held that the widow of the sweeper caste in the case who had re-married did not forfeit her interest in her first husband's property on the ground that S. 2 of the Act of 1856 applies only to such persons as could not have validly re-married before the passing of the Act. The Madras High Court also in *Koduthi* v. *Madu* (I. L. R., 7 M., 321) held that the widow in the case who had re-married had forfeited her interests in the estate of her first husband, not by virtue of the provisions of the Widow Re-marriage Act, but by virtue of a special custom which worked such a forfeiture. In the case of Hindu widows, therefore, whose re-marriage is legal otherwise than by virtue of the provisions of this enactment, it may be taken to be settled law that the rights of such widows in the estate of their first husband are determined by the provisions of the law or the incidents of the custom validating their re-marriage.

Another question of some importance is whether a Hindu widow who had abjured the Hindu religion and embraced Christianity does upon her re-marriage forfeit her rights in the estate of her first husband. As already observed the provisions of the Widow Re-marriage Act could not have been intended to apply to widows who were not Hindu widows on the date of their re-marriage. It is evident that the re-marriage of a Hindu widow who had become a convert to Christianity or Muhammadanism does not depend for its validity upon the enabling provisions of the Act of 1856, and it does not therefore stand to reason that her rights should be curtailed in any measure by its disabling provisions. Upon this principle, the Bengal High Court in *Gopal Singh* v. *Dhungazee* (3 W. R. 206) held that the Hindu widow in the case who had re-married after embracing Muhammadanism did not forfeit her interest in her first husband's property as she had ceased to be a Hindu long before the date of her re-marriage. This decision has since been overruled by a Full Bench decision of the same High Court in *Matungini Gupta* v. *Ram Rutton Roy* (I. L. R., 19 C. p. 289). This Full Bench decision while conceding that the re-marriage of such widows does not depend for its validity upon the provisions of this Act, proceeds upon a questionably liberal interpretation of the expression 'any widow' occurring in S. 2 of the Act of 1856. It is argued that the expression 'any widow' is wide enough to include

not only all widows whose re-marriage is legalized by the provisions of this Act but also all widows who were Hindu widows at some time before their marriage though they had ceased to be Hindu on the date of their re-marriage. It is needless to observe that this construction of S. 2 is altogether inconsistent with the scope of this Act avowedly enacted for the purpose of validating widow re-marriages in cases where they were considered illegal before the passing of the Act. I may also here point out that the soundness of the decision of the majority of the Full Bench in this case as resting upon the line of reasoning followed therein is pertinently questioned in a note upon this decision appearing at p. 312 of the second volume of the Madras Law Journal. I am, however, bound to state that the writer of the note leans in favour of the view that the widow under the circumstances would forfeit her interest in her first husband's property irrespectively of the provisions of the Act of 1856. But as a discussion of that question is apparently irrelevant in an article upon the provisions of the Act, I leave the question alone. Anent the decision in *Gopal Singh* v. *Dungazee*, 3 W. R., p. 206, Dr. Mitra observes: "The correctness of this decision is open to question. If the defendant in the case is a Hindu widow, she is subject to the disability of a Hindu widow after re-marriage under S. 2 of Act XV of 1856. If she is not a Hindu widow, then she cannot continue to hold the property, which is given to her as a Hindu widow." (Trailokyanath Mitra on the Hindu widow p. 213). It is significant that the author does not here anticipate the reasoning on which the majority of the Full Bench in the later case rested their decision. As for the dilemma herein expressed, it is evidently harmless. The answer to the first portion is that the defendant in the case is not a Hindu widow, at the date of her re-marriage and the answer to the second is that she had ceased to be a Hindu before her re-marriage and not by virtue of her re-marriage and that if she forfeit her estate at all, it cannot be her re-marriage that works such a forfeiture. Considering, therefore, the scanty and conflicting case-law on this subject, the questionable soundness of the line of reasoning adopted by the majority of the Full Bench in the later case and the fact that all arguments *pro* and *con* have not been fully raised or considered in the two cases, it is but only fair to say the question is still open. I have thus discussed as briefly as space would permit, the question to whom the provisions of the Act apply

and I now proceed to consider how the rights of such of the Hindu widows as come within the scope of the Act are affected by its provisions.

Except in Bombay where the rights of women are considerably larger than in other provinces, the Hindu widow may acquire rights in property in a limited number of capacities, *viz.*, as a daughter, sister, widow, mother, grandmother and great-grandmother. As daughter and as sister, her rights relate to the estate of the family of her birth. Her rights of property in her other four capacities have reference to the property of her husbands, first and second, and of their successors and heirs. The sections of the Act which bear upon her rights in the estate and of the family of her birth are Ss. 4 and 5 which run as follows :—"Nothing in this Act contained shall be construed to render any widow, who, at the time of the death of any person leaving any property, is a childless widow, capable of inheriting the whole or any share of such property, if, before the passing of this Act, she would have been incapable of inheriting the same by reason of her being a childless widow." "Except as in the three preceding sections is provided, a widow shall not, by reason of her re-marriage, forfeit any property, or any right to which she would otherwise be entitled ; and every widow who has re-married shall have the same rights of inheritance as she would have had, had such marriage been her first marriage." S. 4 and the latter portion of S. 5 in so far as it bears upon the question of the right of a Hindu widow succeeding as daughter to the estate of her father, is so much needless legislation except in Bengal. Whether the daughter is childless or whether she has or is likely to have issue is a question altogether immaterial for the purpose of deciding, except in Bengal, whether a daughter is entitled to succeed to the property of her father. A daughter in Bengal who is a childless widow at the time of the death of her father is under the law obtaining in Bengal incapable of succeeding to the inheritance, and S. 4 of this Act is enacted for the mere purpose of preventing the possibility of such a daughter maintaining a claim to the inheritance on the plausible ground that under the provisions of this Act, she could validly re-marry and bring forth legitimate issue. She is at perfect liberty to re-marry during the lifetime of her father and claim the whole or a share of the inheritance

as the circumstances of the particular case may entitle her to on her father's death; but if she choose to remain a widow till her father dies, she cannot take advantage of her mere capacity to re-marry validly under the provisions of this Act, and succeed to the inheritance. It follows from this that a childless widowed daughter who has remarried during her father's lifetime will on her father's death succeed to the inheritance as a daughter likely to have male issue to the exclusion of another childless widowed daughter who has not re-married during her father's lifetime. Again, if the daughter succeeding to her father's property to the exclusion of her sister in the hypothetical case just above cited die leaving male issue, the sister having remarried in the meanwhile, the question might arise whether the sister who was once excluded from the inheritance at the death of her father could not claim to succeed in preference to the male issue of her deceased sister on the ground that having remarried she should be regarded as a daughter likely to have male issue. It is submitted that she could not maintain the claim. The language of S. 4 makes it abundantly clear that a daughter who is a childless widow *at the time of her father's death* is consequently debarred from taking advantage of the provisions of this Act, from asserting a claim to her father's property or any share of it; and as the section contains no stipulation as to time, one is entitled to argue that if she could not claim to succeed to her father's property immediately upon his death, she could *never* do so. To hold otherwise would be to override certain well-recognised principles of Hindu Law; for, if a daughter, not permitted to succeed to the property of her deceased father on the ground that she was a childless widow at the time of his death, were allowed to claim a share in the inheritance upon her re-marriage, the necessary result would be that she would by re-marrying during the lifetime of her sister in the case devest a share of the estate which had exclusively vested in her sister upon her father's death. Again, that a daughter who is a childless widow at the death of her father is debarred from asserting a claim to the inheritance, not only immediately upon her father's death, but also for all time to come appears also to be evident from the fact that the beginning words of clause 1 of S. 5 of the Act refer to S. 4 as one under which a widow by reason of her re-marriage forfeits some property or some right; for if

the right of a daughter—a childless widow at the death of her father—to succeed to the whole or a share of the inheritance by reason of her remarriage subsequent to his death were not intended to be taken away by S. 4 of the Act, it is not easy to see how S. 4 could be said to deprive such widow of any property or right, seeing that, under the law as it stood before the passing of the Act, a childless widowed daughter had no rights of inheritance in her father's property and could not therefore be said to have forfeited any under S. 4 of this Act. Mr. Mitra, in commenting upon the effect of sections 4 and 5 of this Act observes :—"It will follow, therefore, that of two childless widowed daughters of a Hindu, one who marries during her father's lifetime will be entitled to succeed to his property in preference to her sister who chooses to remain a widow, thus holding out a direct inducement to re-marry and placing the daughter who chooses to remain a widow in a disadvantageous position. Why the legislature should have made this distinction, it is difficult to see." (Mitra on 'The Hindu Widow', p. 207). These observations, it is submitted, cannot stand critical examination. The effect of sections 4 and 5 properly understood is obviously not to deprive the widow of any of her rights for choosing to remain a widow but only to prevent her claiming larger rights than she is entitled to on the mere possibility, which may never be realised, of her re-marrying. It would be extremely unfair if a widow who is not re-married were allowed to claim rights of property simply because an Act has been passed whose provisions allow her to re-marry.

The rights of the Hindu widow (who has re-married) in the family and property of her second husband are governed by the latter portion of S. 5 of the Act. "Every widow who has re-married shall have the same rights of inheritance as she would have had, had such marriage been her first marriage." The provision is so clear that it needs no comment and could not possibly lead to any controversy. The rights of a Hindu widow (who had re-married) in the family of her second husband are exactly those of a Hindu wife or widow, not so re-married, in the family and estate of her husband.

We have next to consider her rights in the estate and family of her first husband. The sections of the Act which deal with these

rights are Ss. 2 and 3. The effect of S. 3 is to deprive her of her right to be the guardian of his children except where she has been constituted their guardian by the will or testamentary disposition of her deceased husband. S. 2 is thus the most important one affecting the widow's right in the family and estate of her first husband. It runs thus:—"All rights and interests which any widow may have in her deceased husband's property by way of maintenance, or by inheritance to her husband or to his lineal successors, or by virtue of any will or testamentary disposition conferring upon her, without express permission to re-marry, only a limited interest in such property with no power of alienating the same, shall, upon her re-marriage, cease and determine as if she had then died, and the next heirs of her deceased husband, or other persons entitled to the property on her death, shall thereupon succeed to the same." The most important question for consideration under this section is whether it operates so as to deprive the widow re-marrying of rights detailed in this section and vested in her before her re-marriage or whether it operates even so as to prevent such rights vesting in her after her re-marriage. In *Okhorah Soot* v. *Bheden Barianee* (10 W. R. 34) where the plaintiff (a Hindu widow who had re-married) claimed to be entitled to inherit the property of her son (by the first husband) who died subsequent to her re-marriage, *Kemp*, J., observed that 'at the time of her re-marriage, no rights and interests, either in the estate of her deceased husband, or in the estate of his lineal succesor, the son, had become vested in the plaintiff; therefore, no estate in which she had any rights and interests ceased and determined upon her re-marriage. After the re-marriage, the son died, and the estate which he inherited from his father devolved on the plaintiff and under S. 5 of the same Act, *viz.*, XV of 1856, she does not by reason of her re-marriage forfeit her right thereto." *Jackson*, J., the other judge who sat with him, however, did not concur in this view. He argued that the intention of the legislature as gatherable from the language of the section and otherwise was to prevent all chances of the re-married widow interfering under any circumstances in her first deceased husband's property and adhered to the opinion that the re-married widow not only forfeited all the vested interests she had in the property of her first husband on the date of her re-marriage but that

she was also incapable of acquiring any rights in the family and estate of her deceased husband subsequent to her re-marriage. As a result of this difference of opinion, the matter went up before *Peacock*, C. J., who fully concurred in the judgment of *Kemp*, J., in *Akorah* v. *Boreanee*, 11 W. R. 82. *Peacock*, C. J., observed:—"In the present case, at that time of her remarriage, the property belonged to her sons and she had no right or interest in that property. It came to her by inheritance from her son, who died after her re-marriage. If the son had pleased, he might have given the property to his mother notwithstanding her re-marriage. At the time of her re-marriage, she had no interest in her deceased husband's property by inheritance to her husband or to his lineal successors. It could not, therefore, cease or determine upon her re-marriage, and if she had died at the time when she had remarried, the property would never have descended to her." Although we have no reason as at present advised to question the soundness of the decision arrived at, we shall not be warranted in saying that the law on the point is settled, seeing that the case just cited is the one solitary instance where the right of a re-married widow to succeed as heiress to her son by the first husband dying after her re-marriage went up before the courts for adjudication though the Act is nearly half a century old. It will therefore be well that the question should be fully considered. *Jackson*, J., in the above case rested his dissenting judgment upon the abstract of S. 2 as indicated by the marginal note to that section and his own inference as regards the policy of the law. It need hardly be said that the marginal note at the best cannot be allowed to sway the mind of a judge while the language of the section is clear and unambiguous. As regards the argument founded on the policy of the law, namely, that the Act was intended to prevent any further interference by the widow, after her re-marriage, in her deceased husband's property, the admitted fact that S. 2 upon any construction does not operate so as to deprive any such widow of more-than-limited interest in her deceased husband's property conferred upon her by any testamentary disposition is sufficient disproof of the soundness of the argument. The words 'may have' do indeed give some support to the contention that a widow forfeits by reason of her re-marriage rights in her husband's property, etc., vested in her before her re-marriage as well as those which she may chance

to acquire after her re-marriage; but the expressions 'upon her re-marriage,' and 'cease and determine' clearly indicate the devesting of vested rights and interests. The last clause of the section 'and the next heirs of her deceased husband or other persons entitled to the property on her death shall thereupon succeed to the same', also supports the view that the section is intended to work a forfeiture only of vested rights; for if the section were intended to deprive a widow of even possibilities of succession the language of this last clause is altogether inappropriate and one cannot really understand how, supposing the widow to forfeit such contingent rights under this section, the person entitled to succeed to the property on her death could succeed to the property upon her re-marriage.

In connection with this section Mr. Mitra suggests another problem for solution : "Suppose in the Mitakshara country a mother, at that time a *wife*, succeeded to the property of her son, and subsequently became a widow and re-married. What will be its effect upon the property which she had inherited from her son? Would she forfeit it, or retain it, is a somewhat difficult question to answer. As she did not get the property as a widow, it may be said she ought not to be deprived of it. On the other hand, it may said, she was holding the property as a *widow*, and therefore, on her re-marriage, she ought to be deprived of it by this section." From the language of the problem it is not possible to ascertain whether the property to which the mother succeeded before her widowhood was the self-acquired property of the son or whether it was the property which the son obtained in a partition with his then living father. If the former, there is no difficulty in the problem at all; for although the widow so acquired the property by inheritance to her then living husband's lineal successors, it was property in which her husband had no manner of interest and the widow's right in such property cannot be said to be *a right in her deceased husband's property*. It is therefore clear that her right in such property, though vested in her before her re-marriage is not and cannot be taken away by the provisions of S. 2 of the Act. If, however, the property was one which the son had obtained by partition with his then living father, the question whether his widowed mother would forfeit her vested right in such property upon her re-marriage is

not free from difficulty. It could be argued with some degree of plausibility that although the property to which she succeeded as heir to her son was not, at the time of the succession, her deceased husband's property, it could still be considered her deceased husband's property in the sense that it was once his. It might thus be urged that the conditions under which a widow re-marrying forfeits her vested rights exist, one and all, in this case and that therefore the widow forfeits her vested rights, though at the time of their vesting in her, she was not a widow. In support of the opposite view, it might be contended that the expression 'in her deceased husband's property' following, as it does, so closely upon the expression 'any widow' should, in fairness, be interpreted to include only such property as continued to be her husband's till she became a widow, *i.e.*, property of which her husband died owner. The latter clause of S. 2 appears also to support this view. This clause which says 'and the next heirs of her deceased husband or other persons entitled to the property on her death shall thereupon succeed to the same,' does not refer to the heirs of her deceased husband's lineal successor's. Another argument in favour of this view is that this disabling section of the Act intended to encourage widow-marriages should if possible be construed so as to preserve, without doing violence to the language of the section, the widow's rights in her first husband's property. One would therefore be inclined, considering all these circumstances, to hold that this section does not deprive the widow of property to which she had during her husband's lifetime succeeded as heiress to her deceased son. I therefore venture it as my opinion, though with considerable hesitation, that the rights which a Hindu widow re-marrying is deprived of under S. 2 of the Act are such of the rights described in the section as vest in the widow between the date on which she becomes a widow and that on which she re-marries.

S. SITARAMA SASTRI.

NOTES OF INDIAN CASES.

Muthu Vijia Raghunatha Ramachandra Vacha Mahali Thurai *v.* Venkatachalam Chetti, I. L. R., 20 M., 35. The decision in this case appears to us to be doubtful. The learned Judges hold that a sub-mortgagee is entitled to sue for sale of the original mortgagor's

interest, where the original mortgagee could claim to do so. *Subrahmania Aiyar, J.*, relies upon the authority of English cases and the provisions of S. 86 of the Transfer of Property Act. It appears to us that the principle of English cases is not applicable; for the theory of mortgage in the English Law is different from that in this Country. The mortgage involves a transfer of the complete ownership to the mortgagee and all that the mortgagor has is a right to re-conveyance on payment of the money. It is called no doubt the Equity of Redemption. The mortgagee is entitled to sell the property on failure of the condition to repay. Where the mortgagee executes a sub-mortgage, the entire ownership vested in the mortgagee is transferred to the sub-mortgagee who becomes the full owner of the property. As he has the right of sale on failure of the condition to repay, he can sell the whole property and, therefore, the interest of the original mortgagor, and pay himself out of the sale-proceeds. But under the Transfer of Property Act a mortgage is merely the transfer of an interest in the property and the sub-mortgage is the transfer of an interest in the mortgagee's interest. He has ordinarily no right of private sale; there is no privity of contract with the original mortgagor; the privity of estate is only in the interest carved out of the mortgagor's interest. This difference in the conception of a mortgage between the two countries appears to us to justify a departure from the English rule entitling the sub-mortgagee to sell the original mortgagor's interest. The omission in the Transfer of Property Act to provide for sale of the mortgagor's interest in a suit by the sub-mortgagee and to treat the relation between the sub-mortgagee and the original mortgagor when there are numerous provisions about 1st and 2nd mortgagees and subsequent mortgagees appears to us to be of full significance. The reference in S. 86 to plaintiffs claiming by derived title seems to us under the circumstances obviously to refer to assignees of the mortgagee and not to sub-mortgagees. The soundness of the decision, therefore, of the learned Judges appears to us to be questionable and the *dictum* of the Bombay High Court in *Padgaya* v. *Baji*, I. L. R., 20 B., 549, lays down the right principle.

Parvathi Ammal *v.* **Saminatha Gurukkal**, I. L. R., 20 M., 40.

We cannot but regard this decision as laying down an erroneous rule of limitation. A widow claiming possession of the estate of her husband who died in 1884 within twelve years of the date of his death is held disentitled to sue for the recovery of the property from a person claiming to be the adopted son, because the period of six years prescribed by Art. 118 to set aside an adoption had elapsed. This ruling is opposed to principle, to the scheme of the Limitation Act

and to the course of decisions in this Country. No doubt the Privy Council in *Jagadamba Chaodhrani* v. *Dakhina Mohun Roy Chaodhri*, I. L. R., 13 C., 318, placed a construction on Art. 129 of the corresponding Act of 1871, which involved the dismissal of a suit for possession of property where a suit to set aside an adoption would be barred. Their Lordships at that time remarked upon the difference in language in Art. 118 of Act XV of 1877 and suggested that the difference of expression meant a difference in the policy of the Legislature. More recently, however, in three cases, *Mohesh Narain* v. *Taruck Nath Moitra*, I. L. R., 20 C., 494; *Lachman Lal Chowdhri* v. *Kanhaya Lal Mowar*, *Ib.* 22 C. 609 and *Sajid Ali* v. *Ibad Ali*, *Ib.* 23 C. 1, there are observations of the Privy Council which seem to indicate that if the question comes before them as regards the construction of Article 118, they may possibly interpret the Article in a manner similar to their interpretation of Art. 129 of Act IX of 1871. We do not think this a sufficient justification for *Shephard* and *Davies, J. J.*, to suppose that the current of authorities in India has been upset by the Privy Council. In a recent case in Bombay the authorities are fully reviewed by *Parsons* and *Candy*, J.J., *Fanyamma* v. *Manjaya Hebbar*, I. L. R., 21 B., 159, and a conclusion arrived at in accordance with reason and principle. Indeed, if their Lordships were pleased to refer to the various Articles in the Limitation Act dealing with suits for declaration of one kind or another, they would realize the mischief of placing this peculiar interpretation on Art. 118 so as to preclude a suit for possession of property after the lapse of a period of six years from the date of setting up an adoption.

Venkiti Naick *v.* Murugappa Chetty, I. L. R., 20 M., 48. We have no doubt that the decision is right. Where causes of action had been joined without the leave required by S. 44, clause (*a*), the Full Bench holds that the dismissal of the action entitles the plaintiffs suing again to deduct the time of the pendency of the former suit in the computation of the period of limitation. It seems to us, therefore, to be an *a fortiori* case, where the causes of action could not be combined even with the leave of the Court. And the claim for the deduction of the time in such a case of the pendency of the action in the computation appears thoroughly well founded. The decision in *Thirthasami* v. *Seshagiri Pai*, I. L. R., 17 M., 299, appears to us to be erroneous. We cannot think of a better cause of a cause of like nature than misjoinder of causes of action necessarily leading to the return of the plaint or the dismissal of the suit.

Seeni Chettiar *v.* Santhanathan Chettiar, I. L. R., 20 M., 58. It appears to us that the right to cut and enjoy trees growing and to be

grown on land for a term of years is an interest in immoveable property. As pointed out in *Marshall* v. *Green*, L. R., I. C. P. 35, where it is contemplated that the purchaser should derive a benefit from the further growth of the thing sold, from further vegetation, and from the nutriment to be afforded by the land, the right is an interest in immoveable property.

Panchena Manchu Nayar *v.* **Gadanearh Kumaranchath Padmanabhan Nayar**, I. L. R., 20 M. We are glad that the mischievous effect of the decision in I. L. R., 19 M., 31, *Ramasami* v. *Bhagavathar Nagendrayyan*, consequent mainly upon the erroneous understanding of the decision will be dispelled by the present case. As was pointed out in our leader in 6 M. L. J., 127, *Subrahmaniya Aiyar* and *Davies*, J.J., relying on the authority of *Smith* v. *Anderson*, 15 Ch. D., 247, hold that to constitute an association within the meaning of the Companies Act, there should be mutual liability of members, and the provision as regards compulsory registration has no application where such mutual liability is absent.

Chengama Nayudu *v.* **Munisami Nayudu**, I. L. R., 20 M., 75. We do not understand this decision. If the after-born son was in the womb at the date of the partition, the ruling that he is entitled to re-open the partition is intelligible enough; but if he was not, we cannot agree with it. The statement of facts, however, does not show that the after-born son was not in the womb at the time of the partition.

Queen-Empress *v.* **Karuppa Udayan**, I. L. R., 20 M., 87. The question appears to us to be rather a ticklish one. The learned Judges escaped the difficulty by simply following the previous cases; but none of the cases gives an intelligible exposition of the law. We have no doubt that the decision, that the presentation of the appeal by the clerk is good, is a convenient one. Going to the reason of the thing, we must confess, that the clerk is only one kind of agent and in the absence of a statutory declaration there is no justification for preferring one species of agents to another.

Chintamallayya *v.* **Thadi Gangireddi**, I. L. R., 19 M. It seems at first difficult to understand how the Judges came to the conclusion that once an objection about the truth or validity of an award sought to be filed under S. 525 is taken, the Court is powerless to do anything more, but must refer the parties to a regular suit upon the award. There is nothing in Ss. 525 and 526 to prevent the Court deciding upon the objection to th filing of the award. There is so much confusion in the decisions of t]

Courts as regards appeal in respect of decrees passed upon awards under the Code that the error into which *Parker, J.*, fell in *Husananna* v. *Linganna*, I. L. R., 18 M., 423, seems easily explicable. *Subrahmania Aiyar* and *Davies*, J.J., have properly overruled the *dictum* of *Parker, J.*

A. v. B., I. L. R., 21 B., 77.

It is refreshing to read Mr. Justice Tyabjee protesting that it is not in the interests of public policy that a husband should supply funds to enable his wife to sue him for divorce. In many cases this would, as the learned Judge puts it, be adding insult to injury. The doctrine of English Law in such cases in favour of the wife is based purely on the old doctrine that by marriage the husband becomes entitled to the whole of the personal property and the income of the real property of his wife; and we share with Justice *Stracey* the doubt whether even in England the rule could apply in the case of parties married after the Married Women's Property Act of 1882. Divorce does not receive special encouragement and we are glad that the Bombay High Court has refused to transplant the English rule in favour of rebellious wives.

Raja Ram *v.* **Ganesh Hari,** I. L. R., 21 B., 91.

We cannot help thinking that *Farran*, C. J., and *Parsons*, J., have put in this case an unduly narrow interpretation upon the ruling of the Privy Council in *Ramgopal* v. *Shamskhaton*, (I. L. R., 20 C., 93) though we do not quarrel with the actual decision in the case. The question was whether certain acts of user on the part of the plaintiff who sued in ejectment were sufficient to establish his personal ownership against defendant. The District Judge held that in the particular circumstances they were insufficient as they were only causual acts explicable otherwise than by possession being in the plaintiff. This was obviously a question of fact and the High Court had no power to interfere. But the learned Chief Justice observes:—" We consider that this finding (a mixed question of law and fact) as a finding with which upon the principles to which we have adverted, we cannot interfere." His Lordship also observes that where the legal inference to be drawn from facts is doubtful, the High Court has no power to interfere in second appeal. If the inference is one of law and if the High Court can come to the conclusion that however doubtful it might be it is incorrect, it is difficult to see how within the words of section 584 the decision is not contrary to law and the Privy Council in the case referred to has laid down in the broadest terms that an inference of Law is one which the High Court can correct in second appeal. Again where the question is one of mixed law and fact, the High

Courts have often interfered (See *Ponanammal* v. *Muthusamy*, I. L. R., 13 M., 47 ; also *Desai Ranchhoddas* v. *Rawal Nathubhai*, I. L. R., 21 B., 110). In the last case *Jardine* and *Ranade*, J. J., refused to accept a finding on a question of mixed law and fact on the ground that the decision of the lower Court proceeded on a misconception of the onus as to how a special custom must be proved. The Bombay High Court generally acts in a very liberal spirit in construing the powers of the High Court in second appeal and we hope that the case under notice will not mark a departure in its policy.

SUMMARY OF RECENT CASES.

Publishing agreement—Assignability.

Griffith v. Tower Publishing Company, Limited, and Moncrieff [1897, I. Ch. 21, per Stirling, J.].

The cases of *Stevens* v. *Benning* (1 K. and J., 168,) *Read* v. *Bentley*, (3 K. and J., 271) and *Hole v. Bradbury* (12 Ch. Do. 886) establish that a publishing contract between an author and a publisher or a firm of publishers is of a personal nature and that the benefit of it is not assignable. This rule is equally applicable to similar contracts between an author and a limited publishing company.

The plaintiff who was the author of certain novels had entered into agreements with the defendant company for their publication. The company subsequently became insolvent and in an action by a debenture-holder the defendant, Moncrieff had been appointed receiver. The defendant Moncrieff having informed the plaintiff of his intention to sell the plaintiff's books, the plaintiff moved for an injunction to restrain the defendant from selling or assigning the books without the plaintiff's consent. *Stirling, J.*, held that the plaintiff was entitled to the injunction he prayed for and said " A limited company may have a reputation for producing books in good style and attractive form, and an author selecting such a company as his publisher may do so in the reasonable expectation that the company, although its members and its officers may fluctuate, may nevertheless consider itself under an obligation to maintain its reputation."

Signature not final—Parol evidence.

Pattle v. Hornibrook [1897, I. Ch. 25, per Stirling, J.].

The general rule of law is that where a person signs *animo contrahendi* a paper containing the terms of a contract, the terms contained in the paper are conclusive and cannot be varied by parol evidence. But this rule does not exclude evidence to show that there was no agreement at all. The parties may not vary an agreement, but they can show that they never came to an agreement.

The plaintiff signed an agreement for the lease of a house to be let by the defendant to himself and sent it to the defendant. The defendant signed it also and left it with his solicitor with instructions not to part with it unless the plaintiff got some responsible person to join in the lease,—a condition which the plaintiff declined to fulfill. In a suit by the plaintiff upon the lease.

Held.—That there was no lease agreement executed between the parties, that in effect the whole transaction amounted only to a counter-offer to the plaintiff on the part of the defendant and that oral evidence of these facts was admissible.

Trade mark—Distinctive device.

Rowland v. Mitchell. *In re* **Rowland's Trade Mark** [1897, I. Ch. 71, C. A.].

The portrait of the manufacturer of goods is a *distinct device* and is a proper subject-matter of a Trade Mark. *Lord Russel of Killowen*, C. J., who delivered the leading judgment in this case said: "By *distinctive device*, is meant that the device must be something which shall be capable of distinguishing the particular goods in relation to which it is to be used from other goods of a like character belonging to other people. In that view it is difficult to conceive that anything could well be more distinctive than the portrait of a man who professes to manufacture the particular article.

Will—Ambiguity—Evidence Extrinsic.

In re **Stephenson, Donaldson v. Bamber** [1897, I. Ch. 75, C. A.].

A testator by his will gave all the residue of his real and personal estate "unto the children of the deceased son (named Bamber) of his father's sister share and share alike." The testator's father had only one sister who had married one Bamber and had by him three sons, William

Bamber, Rowland Bamber and Durry Bamber, all of whom had several children living at the death of the testator. It was proved that the testator was aware of the existence of all the three Bambers above named and not of any one of them in particular alone.

Held: by the Court of Appeal (reversing the decision of *Kekewich, J.*) that the gift was void for uncertainty.

Hare v. *Cartridge* (1842) 13, Sim. 165 and *Lee v. Pain* (1844), 4 Hare, 201, 249, commented on and distinguished.

Procedure—Misjoinder of parties.

Wynne *v.* **Tempest** [1897, I. Ch. 110. per. Chitty, J.]

The defendant and A were trustees of a settled fund, and A was a partner of a firm of solicitors who were doing business as legal advisers to the trust. A received a sum of money being a part of the trust fund as solicitor of the trust and misapplied it and the money was lost. A then died and the present suit was commenced by the plaintiff against defendant as the surviving trustee for a declaration that he was bound to pay the plaintiff the sum so misapplied by A. The defendant then attempted to bring in the other partners of A's firm of solicitors as parties to the present suit on the ground that they were bound to indemnify him inasmuch as the moneys misappropriated by A were found in the firm's account.

Held by *Chitty, J.*—that the right of the defendant to recover from the surviving partners a sum equal to the lost trust fund is not a right depending on the liability of the defendant in the action and that, whether the plaintiff succeeded in this action or not, he could always pursue his remedy against the surviving partners and that the surviving partners were consequently not proper parties to the suit.

Right to inspect—Right to take copies.

Nelson *v.* **Anglo-American Land Mortgage Agency Company, Limited** [1897, I. Ch. 130, per. Stirling, J.]

It was held in this by *Stirling, J.*, following *Mutter* v. *Eastern Midlands Ry. Co.* (38 Ch. D. 9, 2) that the right of a creditor or member of a company to inspect the register of mortgages under S. 43 of the Companies Act of 1862 (25 and 26 Vict. ch. 89) includes a right to take copies though such a right is not specifically mentioned in it.

Such a right is always to be had in India; *vide* S. 76 of Indian Evidence Act.

Documents more than thirty years old—Presumptions.

In re **Airey, Airey** *v.* **Stapleton** [1897, Vol. I., Ch. 164 per, Kekewick, J.]

The plaintiff claimed under a deed of appointment dated the 19th December 1851. The deed came from an unobjectionable repository and purported to be executed by several persons. It purported to be an appointment under a special power, and to be executed by the attorney of the donee of the power. It was held by *Kekewich, J.*, that, although by reason of the antiquity of the deed, the execution of it by the attorney may be presumed, there was no rule of law which required or justified a court in going further and presuming that the attorney was duly authorised to execute the power; and as there was no evidence of such a power the plaintiff was non-suited.

A similar result would undoubtedly have been arrived in an Indian court; *vide* § 90, Indian Evidence Act.

Joint tenancy—Marriage—Severance.

Palmer *v.* **Rich** [1897, I. Ch. 135, *per Stirling, J.*].

The plaintiff and A (two women) became joint-tenants of certain freehold and leasehold property. A subsequently married the defendant and the defendant and the plaintiff together jointly granted leases of the joint properties reserving the rent to the lessors jointly. After the death of A, the question arose whether the plaintiff survived to the whole estate. After a careful examination of the authorities on the subject *Stirling, J., held.*

1. That marriage in itself does not effect a severance of a joint tenancy either in freehold or leasehold estates;
2. And that a lease given by the husband of a joint tenant in conjunction with the other joint tenant reserving the rent jointly does not convert the joint tenancy into a tenancy in common.

Tender—Cheque—Validity.

Blumberg *v.* **Life-Interests and Reversionary Securities Corporation** [1897, I. Ch. 171].

It was held in this case by *Kekewich, J.*, that if a solicitor is instructed by his client to accept a tender of money he is not at liberty to accept a cheque in the place of the money and the tender of a cheque

for the money to the solicitor is not a sufficient tender. It was argued before him that, as money is generally paid by cheques, the solicitor was at liberty to accept a cheque. But *Kekewich, J.*, held that such an extension of the authority given to the solicitor by reference to the habits of mankind was calculated to work mischief inasmuch as the acceptance of a cheque involved passing a judgment on the solvency of the person who tenders the cheque and ruled that a solicitor who has authority to accept a tender accepts anything short of a tender in cash at his own risk.

Trade fixture—Mortgage—Right of removal.

Hobson *v.* Gorringe [1897, I. Ch. 182, C. A.]

The plaintiff had let out on the hire and purchase system a gas engine to one King, under an agreement which provided that the property in the engine was not to vest in King until he had paid all the instalments and that the hirer was at liberty to remove the engine from the possession of King on failure in payment of any one instalment. The engine, as was known to the plaintiff, was required by King to drive his saw mill and was taken by him to his premises and was there affixed to the land by means of screws and bolts so as to prevent it from rocking, and was used by him for the purposes of his trade. King then mortgaged the land in question (together with the enginehouse, warehouse, &c.,) to the defendant *Gorringe* who had no notice of the agreement with the plaintiff subject to the usual proviso for redemption. King subsequently became a bankrupt and the defendant, his mortgagee, entered on the premises and took possession of it including the gas engine which he found there fixed to the soil. The plaintiff whose instalments had not been duly paid by King now sued the defendant for the recovery of the gas engine: The Court of Appeal held—

1. That the object of the annexation of the engine to the soil and the degree of annexation clearly made it a fixture, *i.e.*, part of the soil as between King and the defendant, subject to the right of the plaintiff under his contract to remove it on failure to pay any instalments, and that the fixture passed to the defendant under his mortgage.

2. That such right of the plaintiff was not either an easement or a covenant running with land and imposed no legal obligation on any grantee from King of the land.

3. That the right of the plaintiff under his contract could not be enforced against the defendant who was a *bona fide* purchaser for value without notice of the plaintiff's agreement.

4. And that even if it could be supposed that the defendant had granted a licence to King to remove the fixtures by reason of the fact that he had allowed King to remain in possession, such licence was determined by the defendants entering upon and taking possession of the land and the engine.

Holland v. *Hodgson*, L. R., 7 C. P., 328, commented on and the observation of *Lord Blackburn* with respect to "the circumstances to shew intention" to make a chattel a fixture, discussed, and the nature of the circumstances indicated.

We presume the case would have been decided in exactly the same manner if it had arisen in India; *vide* the Transfer of Property Act, S. 3 (*c*), Ss. 8, 40, 41.

JOTTINGS AND CUTTINGS.

We beg to acknowledge with thanks the following publications:—

The Educational Review for March 1897 (*in exchange*).

Green Bag for March 1897 (*in exchange*).

The Canadian Law Times for March 1897 (*in exchange*).

The Albany Law Journal for March 1897 (*in exchange*).

The Havard Law Review for March 1897 (*in exchange*).

The Yearly Abridgment of Reports in 1896.—By Arthur Turnour Murray, B.A., Bar.-at-Law. Published by Butterworth & Co., 1897.

The Indian Evidence Act with notes by Sir William Markby, K.C.I.E.

Encyclopædia of the Laws of England, Edited by A. Wood Renton, M.A., LL.D., Bar.-at-Law.

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How cases are decided.—The way cases are considered and disposed of by the Supreme Court of the United States was described by Mr. Justice Brewer in the course of his response to a toast at a banquet given by the Bar of the Sixth Federal Circuit at Cincinnati, October 3, 1896. On this point he said:

"In my intercourse with the members of the Bar I have found to my great surprise that the impression prevails with some that cases, after being submitted, are divided among the judges, and that the court bases its judgment in each one wholly upon the report made by some one judge to whom that case has been assigned for examination and

report. I have met with lawyers who actually believed that the opinion was written before the case was decided in conference, and that the only member of the Court who fully examined the record and briefs was the one who prepared the opinion.

"It is my duty to say that the business in our Court is not conducted in any such mode. Each Justice is furnished with a printed copy of the record, and with a copy of each brief filed, and each one examines the records and briefs at his chambers before the case is taken up for consideration. The cases are thoroughly discussed in conference—the discussion in some being necessarily more extended than in others. The discussion being concluded,—and it is never concluded until each member of the Court has said all that he desires to say,—the roll is called, and each Justice present and participating in the decision votes to affirm, reverse or modify, as his examination and reflection suggest. The Chief Justice, after the conference, and without consulting his brethren, distributes the cases so decided for opinions. No Justice knows, at the time he votes in a particular case, that he will be asked to become the organ of the Court in that case; nor does any member of the Court ask that a particular case be assigned to him.

"The next step is the preparation of the opinion by the Justice to whom it has been assigned. The opinion, when prepared, is privately printed, and a copy placed in the hands of each member of the Court for examination and criticism. It is examined by each Justice, and returned to the author, with such criticism and objections as are deemed necessary. If these objections are of a serious kind, affecting the general trend of the opinion, the writer calls the attention of the Justices to them, that they may be passed upon. The author adopts such suggestions of mere form as meet his views. If objections are made to which the writer does not agree, they are considered in conference, and are sustained or overruled as the majority may determine. The opinion is reprinted so as to express the final conclusions of the Court and is then filed.

"Thus, you will observe, not only is the utmost care taken to make the opinion express the view of the Court, but that the final judgment rests, in every case decided, upon the examination by each member of the Court of the record and briefs. Let me say that, during my entire service in the Supreme Court, I have not known a single instance in which the Court has determined a case merely upon the report of one or more Justices as to what was contained in the record and as to what questions were properly presented by it. When you find an opinion of

the Court on file, and published, the profession have the right to take it as expressing the deliberate views of the Court, based upon a careful examination of the records and briefs by each justice participating in the judgment."—*Case and Comment.*

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Marriage, almost compulsory.—The wise legislators of the Argentine Republic have been much troubled about providing a population for their large and fertile country. They have decided to provide a remedy by making marriage almost complusory.

A law has been introduced, the first clause of which reads: "On and after the 1st day of January 1897, every male from the age of twenty to eighty shall pay a tax till he marries, and shall pay it once in every month."

The next clause is more severe, and reads: "Young celibates of either sex who shall without legitimate motive reject the addresses of him or her who may aspire to her or his hand, who continue contumaciously unmarried shall pay the sum of five hundred paisties for the benefit of the young person, man or woman, who has been so refused." —*Green Bag.*

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Injunctions for Public Purposes.—A matter of great popular interest at the present time, the extent of the power of the courts to issue injunctions, at the suit of the government, in restraint of public nuisances, is well discussed by the Texas court in the recent case of *State v. Patterson*, 37 S. W. Rep., 478. In this case the State brought a Bill for an injunction against the keeper of a common gambling house. The Court refused to grant the injunction, on the ground that the case was a purely criminal one, in which it did not appear that any irreparable injury to property or civil rights was threatened. In this conclusion the Court was doubtless right. The opinion of Mr. Justice Neill is of great value, however, as showing the true extent of the power to issue injunctions in such cases. It is there strongly asserted in contradiction to a notion now generally current, that the mere facts that acts enjoined would constitute, if committed, a criminal offence, is no reason why Courts of equity should not interfere to prevent their occurrence. As it is also distinctly recognised throughout the opinion that the irreparable injury which the court will interfere to prevent need not be an injury to tangible property, but may be an injury to the civil rights of a private person or of the public. In taking this broad view of the proper use of injunctions the Supreme Court of Texas approves the unanimous

opinion of the Supreme Court of the United States in the important case. *In re Debs*, 158 U. S., 564. That these cases are non-established law is shown by the very fact that the Bill has been proposed in Congress to cut down by statue the power of the Federal Courts to enforce such injunctions.—*Harward law Review.*

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Recovery of rent under an ultra vires lease.—The New York Court of Appeals has further indicated its position on the troublesome doctrine of *ultra vires* in *Bath Gaslight Co. v. Claffy*, 45 N. E. Rep. 390. Plaintiff, a gas company, executed on *ultra vires* lease of its entire plant and franchises. The lessee after occupying for some time made default in the payment of rent, and finally the lessor resumed possession. This was an action against a surety on a bond conditioned for the performance of the lessee's covenants to recover the amount of the rent that accrued while the lessee was in actual possession. The Court *Vann*, J., dissenting, affirms the judgment for the plaintiff going squarely on the theory that the lessee was liable to this extent on the lease. In delivering the opinion of the majority, *Andrews*, C. J., says: " We think the demands of public policy are fully satisfied by holding that, as to the public, the lease was void, but that as between the parties, so long as occupation under the lease continued, the lessee was bound to pay the rent and that its recovery may be enforced by action on the covenant." This is not affected by the *quasi* public nature of the corporation. Whether a lessee can escape further liability on the lease by abandoning possession is left an open question.

This decision throws additional light on the Court's view of the requirements of public policy. Direct proceedings by the State afford sufficient remedy for violations of the Charter, while honesty and fair dealing demand the payment should be made for benefits received. To reach this result by implying a contract, after holding the actual contract void, is mere evasion. This result is in line with the position taken by Mr. Morawetz. As the elements of contract are present and there is no illegality in the proper sense, to allow recovery on the contract where either party has performed best satisfies the requirements of public policy. Until there is performance the contract is voidable. *Morawetz, Corp* 2, Ss. 650, 685, 689.

But where shall the line be *drawn ?* If the contract is good in part, will the Court give damages for breach of unexecuted part ? If so, what performance will be required to bring about this result ? It has often been said that performance cannot give validity to that which is void in

its inception. Mr. G. W. Pepper in an article in 9 *Harvard Law Review* 255, 269, points out theoretical difficulties that confront a court, which, taking this view of public policy, is yet unwilling to hold all corporate contracts binding upon the parties.—*Harvard Law Review.*

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Criminal Law—Homicide—Self-defence—Duty to retreat.—Held, a person who is unlawfully attacked by another may stand his ground and use such force as at the time reasonably appears to him to be necessary to protect himself. (*State v. Hatch,*) 46 Pac. Rep. 708 (Kan).

This is true up to certain point. Doubtless a person who is unlawfully assaulted may stand his ground and meet force with force, so long as there is no question of extreme violence or taking life. But where there is a state of facts, such that the person attacked has the alternative of retaining or killing his assailant, there seems no doubt that he ought to retreat. He should take his assailant's life only when in his opinion, as a reasonable man, that is the only means of saving his own. 9 *Harvard Law Review* 214; *State v. Donnelly,* 69 Iowa 705. The Kansas Court on the contrary expressly repudiates this view, and lays down the dangerous principle that one unlawfully attacked need never retreat, but may meet force with force to the last extreme.—*Harvard Law Review.*

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Persons—Sale of opium to wife.—Held, that a husband may recover damages from a druggist who against the husband's orders has sold laudanum to his wife in consequence of which she has become a confirmed subject of the opium habit resulting in the loss of her services and companionship, 25 S. E. Rep. 972 (N. C).

In North Carolina a husband is entitled to a wife's earnings so that the plaintiff has suffered a more tangible injury than mere loss of companionship. The Court takes the ground that the defendant is liable because he has wilfully assisted the wife in doing the act which has deprived her husband of her services and companionship. To be sure it was in the course of business and with the purpose of gain, but that hardly justifies the voluntary infringement of the husband's rights. *Hoard v. Peck,* 56 Barb., 202, is in accord with the principal case. It would be interesting to see whether the same view would be taken to-day in jurisdictions where by statute a married woman is practically independent. In such state it seems that the same rule shoulda pply to actions

by the wife for loss of her husband's companionship under like circumstances.

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Public officer—Liability for public moneys.—The defendant, a town supervisor, deposited with a firm of bankers to his credit as supervisor, public moneys in his hands. The banking firm failed and the money was lost. The defendant acted with good faith and without negligence. Action was brought by the County Treasurer on the defendant's official bond. *Held*, on grounds of public policy that the defendant being under the duty to account as a debtor for the public funds in his custody was liable. *Tellinghart* v. *Merril*, 45 N. E. Rep., 375 (N. Y.), Gray, J., dissenting.

Strangely enough this question is now passed upon for the first time by the New York Court of Appeals. The decision seems to reach a just result and to be in accord with cases in other jurisdictions which hold that a public officer required to account for public moneys coming into his hands is liable even though the money be lost by theft, bank failure, or the like, without his fault unless relieved from his responsibility by statute. See a recent case, *Fairchild* v. *Hedges*, 44 Pac. Rep. 125 ; *U.S. v. Prescott*, 3 How. 578 ; *Inhabitants of Hancock* v. *Hazzard*, 12 Cush 112; *State* v. *Harper*, 6 Oh. St. 608. 1 *Dillon on Munic Corps*, S. 237 N. 4. ; decisions cited in the principal case. But see also the dissenting opinion of Hoyt, C. J., in *Fairchild v. Hedges, supra.*

The Court in the principal case by stating the defendant's liability as that of a debtor, probably did not mean to imply that he was not a trustee. That a public officer, much like a *del credere* factor, is a trustee, although held to the strict liability of a common law debtor, is indicated by the fact that he may be indicted as an embezzler. Furthermore, it would seem that if the officer became bankrupt and the public funds were traceable, the organization to which he was responsible would have a specific claim on the funds and would not come in as a general creditor. The Court in the principal case leave open the question as to the legal result were the officer prevented from responding by the act of God or the public enemy, intimating, however, that in this case he would be exonerated. There is thus suggested a very strong analogy between a public officer and a common carrier.—*Harvard Law Review.*

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Torts—Proximate cause—Injuries from fright.—Defendant, by negligent driving, frightened plaintiff, so that she afterward suffered a

miscarriage and a long illness. *Held*, that no recovery may be had for injuries resulting from fright, caused by negligence of another, where no immediate personal injury is received and that the negligence was not the proximate cause of the miscarriage. *Mitchell* v. *Rochester Ry. Co.*, 45 N. E. Rep. 354 (N. Y.)

This reverses in a short opinion a long and carefully reasoned decision in the Circuit Court, 25 N. Y. Supp. 744, affirmed by the Supreme Court, 28, N. Y. Supp. 1136. The Court of Appeals is influenced largely by fear of opening the way for speculative claims and admits no distinction in that respect between cases where the suffering is purely mental and those where the actual physical damage follows. The reasoning of the lower Court, 25 N. Y. Supp. 744, is much more satisfactory, though of course the authority of *Victorian Ry. Commissioners* v. *Coultas*, (13 App. Case 222, (Privy Council) is very strong in support of the final decision. The case is discussed at length in a note 7 *Harvard Law Review* 304. See also 10 *Harvard Law Review* 239.—*Harvard Law Review.*

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List of Advocates-General of Madras from 1795 *to* 1897 *with their respective qualifications.*

1. *Mr. Benjamin Sullivan* was Attorney-General in the Mayor's Court and the Recorder's Court from 1795 to 1801. He was raised to the bench as a Judge of the Supreme Court when that Court was established in Madras in 1801. *Mr. Benjamin Sullivan* must have been a Barrister-at-Law since the statute required that the Judges of the Supreme Court should be Barristers-at-Law.

2. *Mr. Robert Williams* was the Company's Acting Advocate-General in 1803. Before he became Advocate-General he was the Company's Solicitor from 1795 to 1801 in the Mayor's Court and the Recorder's Court. He arrived at the Madras Presidency in September 1785 as a Cadet, was subsequently in the 19th Dragoons and was enrolled as an Advocate, Attorney, Solicitor, Proctor and Notary Public of the Mayor's Court on 1st December 1789. From the account given of him in the Recorder's Court roll, it seems pretty clear that he was not a Barrister-at-Law.

3. *Mr. Alexander Antruther* was the next Advocate-General. He held the office from 1804 to 1812 when he was appointed Recorder of Bombay. He is described in the Recorder's Court roll as a Barrister of Lincoln's Inn and as licensed by the Court of Directors to practice pursuant to the Charter of 1798 establishing the Recorder's Court at Madras.

4. *Sir Samuel Toller* succeeded Mr. Alexander Antruther and was Advocate-General from 1813 to 1821. It does not appear whether he was a Barrister-at-Law or not.

5. *Mr. Herbert A. D. Compton* succeeded Sir Samuel Toller. He was appointed Acting Advocate-General in 1822 and was confirmed in 1823. Mr. Compton landed at Madras in June 1790 and was a Lieutenant in His Majesty's 74th Regiment till August 1796. He was enrolled as an Advocate, Attorney, Solicitor, Proctor and Notary Public on 5th September 1797 in the Mayor's Court at Madras. Mr. Compton held the office of Company's Junior Counsel in 1803 when Mr. Robert Williams was the Company's Acting Advocate-General, till the office of Junior Counsel was abolished by the order of the Court of Directors in the same year. When Sir Samuel Toller was appointed Advocate-General, the office of the Company's Junior Counsel seems to have been specially revived for two or three years, for it appears that Mr. Compton held that office from 1813 to 1815. Mr. Compton was Advocate-General from 1822 till some time in 1828. From the account given of him in the Recorder's Court roll, it would seem that he was not a Barrister-at-Law.

6. When Mr. Compton intimated to the Company his intention to retire from office in 1827, the Court of Directors appointed *Mr. George Norton*, who was then Advocate-General of Bombay, to succeed Mr. Compton on his retirement. Mr. George Norton assumed charge of his office some time in 1828 and continued to hold the same till 1853. He seems to have gone on leave for a short time in 1833 when Mr. William Bathie acted for him. Mr. George Norton seems to have been a Barrister-at-Law.

7. *Mr. Thomas Sydney Smith* who was also a Barrister at-Law succeeded Mr. George Norton in 1853 and held the office till 1864. He was enrolled as an Advocate of the Supreme Court in 1836 and also as a Vakil of the late Sudder Court. Accordingly he is described as a Vakil in the Sudder Court Reports. Though by Act I of 1846 every Barrister of any of Her Majesty's Courts of Justice in India was entitled as such to plead in the Sudder Courts of the East India Company subject to all the rules in force in the said Sudder Courts applicable to Pleaders, yet every Barrister seems to have got himself enrolled as a Vakil or Pleader of the Sudder Courts, in order that, like Vakils, he might plead and also act. When both the Supreme Court and the Sudder Court were abolished and the present High Court was established in their stead in August 1862, the Advocates and the Attorneys of the Supreme Court were enrolled as Advocates and Attorneys of the new High Court, while

at the same time the Vakils of the Sudder Court were enrolled as Vakils of the High Court, and it appears that Mr. Sydney Smith, Mr. J. B. Norton and Mr. J. D. Mayne and others who, prior to the establishment of the High Court, were both Advocates of the Supreme Court and Vakils of the Sudder Court were accordingly enrolled Advocates and Vakils of the High Court. By the rules passed by the High Court on 28th August 1862, Vakils of the High Court were allowed to *plead* and *act* for the suitors of the Court only in all matters of appellate jurisdiction, civil or criminal, and in matters of extraordinary original civil jurisdiction under section 13 of the Letters Patent. By the same rules it was provided that an Advocate of the Court could only *appear* and *plead* while an Attorney could only *act* for the suitors of the Court in all matters, civil and criminal. It was only as a Vakil that an Advocate or Attorney could *act* and *plead* on the appellate side of the High Court, and therefore such of the Advocates and Attorney as were already enrolled as Vakils of the Sudder Court were enrolled as Vakils of the High Court. When Advocates and Attorneys who had been practising as Pleaders in the Sudder Court were allowed to get themselves enrolled as Vakils of the High Court, the question of rank and precedence between them and the Native Vakils who had also got themselves enrolled as Vakils of the High Court had to be settled, and the High Court by the rules of 28th August 1862 provided that Advocates and Attorneys after they had been admitted as Vakils would, when they pleaded in their character of Vakils, have rank and precedence as Vakils, and their standing should for this purpose date from the time of their first admission to practise in the same manner as Pleaders in the late Sudder Court. By this rule Native Vakils had rank and precedence over Advocates and Attorneys enrolled as Vakils according to their seniority as Vakils. The Asylum Press Almanack for the year 1863 gives a list of Vakils of the High Court in the following order :—

S. Tirumala Charry.
Alexander M. Ritchie, (Barrister-at-law).
P. B. Gordon, (Attorney-at-Law).
J. B. Norton, (Barrister-at-law).
J. D. Mayne, (Barrister-at-Law).
Hon. V. Shadagopa Charlu and others.

The list of Vakils is given in the above order in the Asylum Press Almanack till 1873, when, for the first time, the Almanack omits the name of Barristers and Attorneys from the list of Vakils. In October 1863, rules were framed prescribing the qualifications for admission of persons

as Advocates, Vakils and Attorneys of the High Court, and it was provided that Vakils admitted under those rules were entitled to appear and plead and act on all sides of the High Court including the original side. Barristers who were enrolled as Advocates under the rules of 1863 were not enrolled as Vakils. Though as a matter of fact, they act like Vakils on the appellate side, there does not seem to have been a rule permitting them, not only to plead, but also to act on the appellate side. Having regard to the question of precedence on the appellate side as settled by the rules of 1862 and to the fact that all the branches of the profession act alike as Vakils on the appellate side, it is by no means clear that on the appellate side, Barristers or Advocates as such will have precedence over Vakils. In Calcutta the case is somewhat different, for Barristers practise only as Advocates and do not act like Vakils on the appellate side.

8. *Mr. John Bruce Norton* succeeded Mr. Sydney Smith as Advocate-General and held the office from 1864 to 1871, except when he went on leave in 1867. Mr. J. D. Mayne then acted for him.

9. *Mr. J. D. Mayne*, who had acted for Mr. J. B. Norton in 1867, was again appointed to act as Advocate-General in 1872. He does not seem to have been confirmed in the office, for Mr. H. S. Cunningham was appointed Advocate-General in the same year.

10. *Mr. Cunningham* was Advocate-General from 1872 to 1878, when he was raised to the Bench as a Judge of the Calcutta High Court.

11. *Mr. Cunningham* was succeeded by Mr. *P. O'Sullivan*, who held the office from 1878 to 1888, when he died.

12. *Mr. H. H. Shephard* acted as Advocate-General during Mr. P. O'Sullivan's absence in 1886 and was appointed permanently to the office in 1889, but was immediately raised to the Bench as a Judge of the Madras High Court.

13. *Mr. Spring Branson*, who was appointed to act as Advocate-General immediately on Mr. P. O'Sullivan's death in 1888, was again appointed to act for Mr. Shephard, and was finally confirmed in the office in 1890. He held the office till February 1897, except for a short time in 1892 when he went on leave.

14. *Mr. H. G. Wedderburn* acted as Advocate-General during Mr. Branson's absence on leave in 1892.

15. When Mr. Branson took leave in February last, *the Hon. Mr. V. Bhashyam Iyangar*, a Vakil of the High Court of Madras, was appointed as Officiating Advocate-General.

Note.—The above is compiled from such authentic sources as are available in Madras.

REVIEWS.

The Yearly Abridgment of Reports in 1896—by *Arthur Turnour Murray*, B.A., Barrister-at-Law.—Published by Butterworth and Co., 1897;—We have nothing but praise for this excellent publication. The digest shows that the author has studied every case, and his careful analysis of the points decided in each case must indeed be very useful. The plan of the book is altogether new and the alphabatical list of defendants' names is a novel feature. The carrying on of such a work year after year would add many bulky volumes. But that is a disadvantage incident to every carefully-prepared digest.

The Indian Evidence Act with notes, by *Sir William Markby*, K.C.I.E. Sir William Markby requires no introduction to the Indian Reading Public. As a distinguished Judge of Calcutta and as a Jurist his reputation stands very high. The book we have before us is a critical study of the language of the Act, and we have no doubt, it must be useful to students for whom it is intended and to the legislator who may undertake the task of revising the Act. Many of the criticisms are characterized by strong common sense. We have however been somewhat disappointed in the book. We are unable to agree with some of the criticisms made by Sir William. In his notes to S. 92, the author says that if there is a rule of law which requires the transaction to be in writing any separate agreement must also be in writing. We do not see how this statement follows. A mortgage should be in writing, but it does not follow that a separate oral agreement that the trees upon the premises should not be cut or that the mortgaged premises should be kept in repair, should be in writing. Again Sir William says that S. 93 applies only when a writing is required by law. But the very first illustration to the section, of an agreement to sell a house for Rs. 1,000 or Rs. 1,500, shows that the section applies to cases other than those required by law to be in writing. In his notes to S. 104 speaking of the

burden of proof he points out a peculiarity in criminal cases that the burden is not shifted when the defendant pleads a general or special exception. Sir William appears to forget that the apparent difference is duo to the difference in the system of pleading in criminal cases. If the accused, instead of being asked at the close of the evidence for the prosecution what he has got to say, were asked the question at the beginning of the trial and he pleaded an exception, the burden would be shifted from the prosecution and he would have to begin. The difference therefore is due not to the operation of the rule of evidence but to the rule of pleading. Speaking of S. 106, he suggests that it cannot apply where the person having special knowledge cannot be called as a witness. This seems wrong, for in prosecutions for not taking out licenses under the Municipal Acts, the accused cannot be called as a witness to prove the license. We feel, however, bound to add that there are valuable suggestions made by the author in other places. His criticism of the relevancy sections at pp. 17 and 18, his remark that there is nothing in the Act to show that the statements referred to in section 19 can be proved, and his question, who are the other two, as regards the heading "opinions of third persons" to S. 45 are very suggestive. We can commend the book to the perusal of every careful student of the Act. In these days of elaborate commentaries with strings of cases making it difficult to see the principle of the section, it is good to have a book from the pen of a competent writer drawing attention to the language of the Act and the points suggested by it.

Encyclopædia of the Laws of England—Edited by *A. Wood Renton*, M.A., LL.B., Barrister-at-Law, Vol. I :—

We have looked through this extremely useful book and we feel that no legal library will be complete without it.

The abridgments which have a standing in the field of English Law, such as Bacon's and Viner's are very much out of date, and a book, therefore, treating of the law with all its developments up to the present date is a great desideratum. Such a want is supplied by the present volume and its promised successors. The publisher's notice informs us that the work will be completed in 12 vols., and we cannot regard the price of £ 1 per volume as too high as law books go. We have every guarantee for the excellence of the book in the fact that many of the contributors are well-known names in the field of legal authorship. We have looked through several titles in the book and we find the information interesting